

Chapter 235**WETLANDS RULES AND REGULATIONS
Updated to 7-16-07****§235-1. General provisions.****§235-2. Definitions.****§235-3. Application procedures.****§235-4. Plans and information.****§235-5. Certificate of compliance.****§235-6. Emergencies.****§235-7. Severability.****§235-8. Effective date.**

[HISTORY: Adopted by the Conservation Commission of the Town of Westford 1-1-1989 Amendments noted where applicable.]

GENERAL REFERENCES

Aquifer protection - See Ch. 61.

Flood damage prevention - See Ch. 99.

Water - See Ch. 169.

Zoning - See Ch. 173.

Subdivision of land - See Ch. 218.

§235-1. General provisions.

A. Authority. These rules and regulations are promulgated by the Westford Conservation Commission ("Commission") pursuant to authority granted it under the Westford Wetlands Protection Bylaw ("bylaw").¹

B. Purpose.

(1) These rules and regulations are promulgated to create uniformity of process and to help clarify the provisions of the bylaw.

¹ Editor's Note: See Ch. 171, Wetlands.

- (2) Because the provisions of MGL C. 131, §40, shall, where appropriate, be applied simultaneously with those of the bylaw, the applicant is advised to refer also to the Department of Environmental Quality Engineering Wetlands Protection Act Rules and Regulations, as well as to that Act itself (310 CMR 10 C. 13 S. 40).

C. Revision. These regulations may be revised from time to time by a majority vote of a quorum of the Commission, provided that two (2) advertised public hearings have been held for discussion of the proposed revisions.

D. Presumption. **[Added 12-8-1993, Revised 10-25-2000]**

- (1) Based on experience to date with projects within one hundred (100) feet of wetlands, the Commission shall presume that work in the categories below, within the tabulated distances from a wetlands, will result in alteration of the wetlands. This presumption is rebuttable and may be overcome upon a clear showing that the nature of the proposed work, special design measures, construction controls or site conditions will prevent alteration of the wetlands. Depending on site conditions and project characteristics, the Commission may also find that work at greater distances from the wetlands will alter the wetlands. For the purposes of the table below, "work" means cutting or removal of vegetation, filling, excavation, grading, operation of motorized construction equipment, storage or stockpiling of earth or construction materials or debris or brush or other wood or yard waste or placement of vehicles, recreational equipment such as swing sets or trampolines or fences, and "building" means any structure requiring a building permit, as well as a shed or other storage structure of any size. (For purposes of this section, the definition of "work" shall not be construed to apply to the mowing of lawn areas or maintenance of gardens or agricultural fields in existence at the time of adoption of this regulation.)

Additionally, the term "Undeveloped Lot" shall mean a parcel of land which has never had a building or structure of any kind located within it; "artificial surface" shall mean land surfaces which have been converted to areas including, but not necessarily limited to, formal landscaping, lawns, or maintained ground cover areas, as well as any non-organic surface, including but not necessarily limited to paved areas, gravel drives or parking areas and structures. The term "artificial surface" shall not apply to such areas as, but not necessarily limited to, active or abandoned agricultural fields, hayfield, pastures, sand and gravel pits and gardens, or cleared or thinned forest stands or tree plantations.

Type of Project	Limit of Work (feet)	Limit of Building (feet)
Work on a lot with an existing structure where work is proposed on an artificial surface area of the lot.	30	55
Work on a lot with an existing structure where work is proposed within an existing non-artificial surface area.	50	75
Work on an undeveloped lot*	50	75

*Where access to the buildable portion of an undeveloped lot can only be provided via a wetlands crossing or by work closer than the prescribed limits, then work in association with only the roadway or driveway may occur closer than the prescribed limits. Such roads and driveways must be designed to cross or approach wetlands in such a fashion to minimize impact within the wetlands and the applicable no disturb zones within the Buffer Zone.

- (2) These regulations shall not apply if they result in the complete deprivation of value of the property.

§235-2. Definitions.

As used in these regulations, the following terms shall have the meanings indicated:

ACTIVITY – Any work proposed and described on the application and plans submitted to the Commission.

AQUACULTURE:

- A. Land in aquacultural use means land presently and primarily used in the growing of aquatic organisms under controlled conditions, including one (1) or more of the following uses: raising, breeding or producing a specified type of animal or vegetable life.
- B. Normal maintenance or improvement of land in aquacultural use means the following activities, when done in connection with the production of aquatic organisms as defined above: draining, flooding, heating, cooling, removing, filling, grading, compacting, raking, tilling, fertilizing, seeding, harvesting,

filtering, rafting, culverting or applying chemicals in conformance with all state and federal laws; provided, however, that such activities are clearly intended to improve and maintain land in aquacultural use and that best available measures are utilized to ensure that there will be no adverse effect on wetlands outside the area in aquacultural use, and further provided that removing, filling, dredging or altering of a marsh is not to be considered normal maintenance or improvement of land in aquacultural use.

BANK:

- A. The portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a bordering vegetated wetland and adjacent floodplain or, in the absence of these, it occurs between a water body and an upland.
- B. A "bank" may be partially or totally vegetated or it may be comprised of exposed soil, gravel or stone.
- C. The upper boundary of a "bank" is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a "bank" is the mean annual low flow level.

BEACH – See definition for "bank"

BOG – See "freshwater wetland" definition.

BROOK – A body of running water (see "stream").

CONDITIONS – Statements included in a written order or denial issued by the Commission for the purpose of regulating or prohibiting any activity.

DENIAL or ORDER – A document issued by the Commission prohibiting or stating conditions which shall regulate the proposed activity in whole or in part.

DETERMINATION – A written finding by the Commission whether the proposed work shall or shall not require the filing of an application and/or whether the proposed work to be done is significant to the interests described in the bylaw.

DREDGE – Any cleaning, deepening, widening or excavating, either temporarily or permanently, of any area subject to the bylaw.

EFFECT ON THE ENVIRONMENT - Includes the possible effect of the proposed activity upon public or private water supply, groundwater, flood control, erosion control, storm damage, water pollution, wildlife habitat, fisheries, shellfish, recreation and aquaculture.

EROSION CONTROL - The prevention or reduction of the movement of soil particles or rock fragments by water, wind, ice and/or gravity.

FEMA FLOODLINE - The boundaries specified by the Federal Emergency Management Agency, as located on Flood Insurance Rate Maps for the Town of Westford dated June 15, 1983 (The maps are available for inspection at the Conservation Commission office.)

FILL - The placing of any material that raises, either temporarily or permanently, the elevation of any area subject to the bylaw.

FISHERIES - See "protection of fisheries."

FLOOD CONTROL - The prevention or reduction of flooding and flood damage.

FLOODING - A local and temporary inundation or as a rise in the surface of a body of water, such that it covers land not usually under water.

FRESHWATER WETLAND - The term "freshwater wetlands," as used in these rules and regulations, shall mean wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for plant community for at least five (5) months of the year; emergent and submergent plant communities in inland waters; and that portion of any bank which touches any inland waters.

A. The term "swamps," as used in this definition, shall mean areas where groundwater is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface and where a significant part of the vegetational community is made up of, but not limited to or necessarily including all of, the following plants or groups of plants: alders (ALNUS), ashes (FRAXINUS), azaleas (RHODODENDRON CANADENSE and R. VISCOSUM), black alder (ILEX VERTICILLATA), black spruce (PICEA MARIANA), buttonbush (CEPHALANTHUS OCCIDENTALIS), American or white elm (ULMUS AMERICANA), highbush blueberry (VACCINIUM CORYMBOSUM), larch (LARIX LARICINA), cowslip (CALTHA PALUSTRIS), poison sumac (TOXICODENDRON VERNIX), red maple (ACER RUBRUM),

skunk cabbage (SYMPLOCARPUS FOETIDUS), sphagnum mosses (SPHAGNUM), spicebush (LINDERA BENZOIN), black gum tupelo (NYSSA SYLVATICA), sweet pepperbush (CLETHRA ALNIFOLIA), white cedar (CHAMAECYPARIS THYOIDES) and willow (SALICACEAE).

- B. The term "wet meadows," as used in this definition, shall mean areas where groundwater is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes, made up of but not limited to or necessarily including all of, the following plants or groups of plants: blue flag (IRIS), vervain (VERBENA), thoroughwort (EUPATORIUM), dock (RUMEX), false loosestrife (LUDWIGIA), hydrophilic grasses (GRAMINEAE), loosestrife (LYTHRUM), marsh fern (DRYOPTERIS THELYPTERIS), rushes (JUNCACEAE), sedges (CYPERACEAE), sensitive fern (ONOCLEA SENSIBILIS) and smartweed (POLYGONUM).
- C. The term "marshes," as used in this definition, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to or necessarily including all of, the following plants or groups of plants: arums (ARACEAE), bladder worts (UTRICULARIA), bur reeds (SPARGANIACEAE), button bush (CEPHALANTHUS OCCIDENTALIS), cattails (TYPHA), duck weeds (LEMNACEAE), eelgrass (VALLISNERIA), frog bits (HYDROCHARITACEAE), horsetails (EQUISETACEAE), hydrophilic grasses (GRAMINEAE), leatherleaf (CHAMAEDAPHNE CALYCVLATA), pickeral weeds (PONTEDERIACEAE), pipeworts (ERIOCAULON), pond weeds (POTAMOGETON), rushes (JUNCACEAE), sedges (CYPERACEAE), smartweeds (POLYGONUM), sweet gale (MYRICA GALE), water milfoil (HALORAGACEAE), water lilies (NYMPHAEACEAE), water starworts (CALLITRICHACEAE) and water willow (DECODON VERTICILLATUS).

GROUNDWATER - All water beneath any land surface including water in the soil and bedrock beneath water bodies.

HEARING - An open meeting held for purposes of answering questions and hearing comments from interested citizens.

LAKE - A body of water with a surface area of ten (10) or more acres, either artificial or natural.

LAND UNDER SAID WATERS - Land below a brook, river, stream, pond or lake.

MAJORITY - The number of signatures necessary for an order or denial and shall consist of more than half of the duly appointed members of the Commission.

MARSH - See "freshwater wetland" definition.

NOTICE OF INTENT - Notice of a project as submitted to the Conservation Commission on the form included in these regulations as Attachment No. 3.²

OWNER OF LAND ABUTTING THE ACTIVITY - The owner of record of land directly beside the property limits of the site of the proposed activity in any direction, including lands located across a street, way or waterway.

PARTY - A person, applicant, Conservation Commission, any intervenor(s) or abutter.

POLLUTION - The discharge of harmful substances in such volumes as to create the possibility of contamination.

POND - Any open body of fresh water, either naturally occurring or man-made by impoundment, with a surface area observed or recorded within the last ten (10) years of at least ten thousand (10,000) square feet, and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, "extended drought" shall mean any period of four (4) or more months during which the average rainfall for each month is fifty percent (50%) or less of the ten-year average for that same month. Basins or lagoons which are part of wastewater treatment plants shall not be considered "ponds," nor shall swimming pools or other impervious man-made retention basins.

PREVENTION OF POLLUTION - The prevention or reduction of contamination or degradation of the physical, chemical or biological characteristics of surface or ground water.

PRIVATE WATER SUPPLY - Any source or volume of surface or ground water demonstrated to be in any private use or demonstrated to have a potential for private use as water supply.

PROTECTION OF FISHERIES - Protection of the capacity of an area subject to the bylaw to:

² Editor's note: Attachment No. 3 is available at the Conservation Commission office.

- A. Prevent or reduce contamination or damage to fish; and
- B. Serve as their habitat and nutrient source, including all species of freshwater finfish and shellfish.

PROTECTION OF LAND CONTAINING SHELLFISH - Protection of the capacity of an area subject to the bylaw to:

- A. Prevent or reduce contamination or damage to shellfish; and
- B. Serve as their habitat and nutrient source.

REMOVE - The act or process of taking away any type of material that changes the elevation, either temporarily or permanently, of any area subject to the bylaw.

SEDIMENTATION - The process of depositing material which has been suspended in water.

SHELLFISH - See "protection of land containing shellfish"

SIGNIFICANT - That standard to be used by the Commission in determining whether activity subject to the bylaw plays a role in the provision or protection of an interest of the bylaw. Factors to be considered in establishing significance may include one (1) or more of the following:

- A. Any actual or potential contamination to public, private or ground water supply, including aquifers or recharge areas.
- B. Any reduction of the flood storage capacity of a freshwater wetland, river, stream or creek.
- C. Any alteration of a river, stream or creek that results in any increase in the volume or velocity of water which may cause flooding or storm damage.
- D. Any actions which shall remove, fill, dredge or alter any area subject to the bylaw.

STORM DAMAGE PREVENTION - The prevention of damage caused by water from storms, including, but not limited to, erosion and sedimentation, damage to vegetation, property or buildings or damage caused by flooding, waterborne debris or waterborne ice.

STREAM - Any body of running water, including brooks, continuous or intermittent, flowing in a definite channel on the surface of the ground.

SWAMP - See "freshwater wetland" definition.

WET MEADOW - See "freshwater wetland" definition.

WILDLIFE HABITAT - Those areas subject to the bylaw which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide important food, shelter, migratory or overwintering areas or breeding areas for wildlife.

§235-3. Application procedures.

- A. Applications shall be submitted in the form of Attachment No. 3.³ The date of filing of the application shall be deemed the date of receipt either by mail or in person by the Commission, and all time periods set forth in the bylaw shall commence from this date. An application shall not be deemed filed under the bylaw unless it is completed in the appropriate form and includes plans, information and maps as required by the Commission, a list of abutters and the filing fee.
- B. Determination of applicability (see definition of "determination" in §235-2). Any person who desires a determination as to whether the bylaw applies to an area shall submit a written request to the Commission together with a plan showing the property lines and nearby streets. The request for a determination shall be in the form of Attachment No. 1.⁴ The request for a determination shall include a list of current abutters, including across a traveled way or water body.
- C. Extension. An extension shall be in the form annexed hereto as Attachment No. 5.⁵ If there has been a significant change of the proposed activity at the time the request for an extension is made, the Commission may require a new filing of an application and a new hearing.
- D. Fees for Outside Consultants (**Added 3-28-07**)

Purpose. As provided by G.L. Ch. 44 §53G, the Westford Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. Such services shall be deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of: the Wetlands Protection Act (G.L. Ch. 131 §40), the Westford non-zoning wetlands bylaw (Ch. 171, Bylaws of the Town of Westford), Conservation Commission Act (G.L. Ch. 40 §8C), or any other

³ Editor's Note: Attachment No. 3 is available for inspection at the Conservation Commission office.

⁴ Editor's Note: Attachment No. 1 is available for inspection at the Conservation Commission office.

⁵ Editor's Note: Attachment No. 5 is available for inspection at the Conservation Commission office.

state or municipal statute, bylaw, ordinance or regulation, as they may be amended or enacted from time to time. The Conservation Commission may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above-referenced laws or regulations.

Special Account. Funds received pursuant to these rules shall be deposited with the Westford town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.

Consultant Services. Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Commission. The consultant shall be chosen by, and report only to, the Commission and/or its administrator.

Notice. The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

Payment of Fee. The fee must be received prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application. An appeal stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third party consultant review identified as necessary by the Commission. The Commission shall specify in its denial the nature of the information lacking which its chosen consultant would provide, e.g. the questions it needs answered.

Appeals. The applicant may appeal the selection of the outside consultant to the selectboard, who may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required

qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the selectboard and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

Return of Unspent Fees. When the Commission's review of a project is completed and an Order of Conditions issued, any balance in the special account attributable to that project shall be returned within 30 days. The excess amount, including interest, shall be repaid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Commission with appropriate documentation. A final report of said account shall be made available to the applicant or applicant's successor in interest.

E. Application Fee (Added 7-11-07)

- (1) There shall be a twenty-five dollar filing fee required in addition to the fee required under the Massachusetts Wetlands Protection Act for any application filed with the Commission.
- (2) No fee is charged for extensions of Orders of Conditions
- (3) Town, county, state and federal projects are exempt from fees.

§235-4. Plans and information.

A. Plans shall describe the proposed activity and its effect on the environment. All plans, drawings, sketches and calculations shall be dated and signed by the person(s) responsible for their preparation. Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by the appropriate design professional who shall be registered in the Commonwealth of Massachusetts. The applicant shall submit with the application all plans, drawings, sketches and drainage calculations which are submitted to the Planning Board and Board of Health. Plans and information which may be required by the Commission include, among others:

- (1) A cutout, eight and one-half by eleven (8½ x 11) inches, of a United States Geological Survey Quadrangle Sheet showing the name and location of the proposed activity.
- (2) The names of all nearby roads and streets.

- (3) Location, extent and area of all present and proposed structures and paved areas.
- (4) Outline of the watershed areas and floodplain zones (see Federal Emergency Management Agency Flood Insurance Rate Maps for the Town of Westford dated June 15, 1983).
- (5) Two (2) wetland delineation lines: a field located wetland boundary and zoned wetland line as determined by the Westford Wetland Zoning Bylaw.⁶

B. Engineering drawings may be required to include the following:

- (1) A title page designating the name of the project, the project location, the name(s) of the persons preparing the drawings and the date prepared, including all the latest revision dates.
- (2) Layout and site plans shall be drawn at commonly acceptable scales, preferably forty (40) feet to the inch, with detail and profile drawings drawn to appropriate scales; present and proposed contours at two-foot intervals of the entire site.
- (3) All brooks, creeks, rivers, streams, ponds, lakes and wetlands, whether continuous or intermittent, natural or man-made.
- (4) Present and proposed location of all rights-of-way, easements and underground utilities.
- (5) Water quality classifications (General Laws Chapter 21, the Clean Waters Act).
- (6) Road drainage information, including: location of proposed and existing water retention areas, all existing and proposed storm drainage pipes, ditches, structures, culverts and outfalls, fully described with information on inverts, slopes, materials entrance and outlet conditions, bedding in unstable soils, details of drainage structures and endwalls and other standard engineering data on such work.
- (7) Location of areas to be removed, dredged, filled or otherwise altered in any way, including the grading of these areas, and areas to be left untouched.
- (8) Locations and elevations of cellars or floors; locations, bottom elevations and designs of sewage disposal systems which comply with local and state environmental codes.

⁶ Editor's Note: See Ch. 173, Zoning.

- (9) Cross sections showing slope, bank and bottom treatment of each watercourse or wetland proposed to be altered. Locations of cross sections shall be specified.
- (10) Soil information, including:
 - (a) Soils and groundwater elevation information from all deep hole and percolation tests performed on the site.
 - (b) Locations, logs and water table information of all test borings, test pits and other subsurface explorations; direction of flow of groundwater indicated to the best precision possible from the available information. (Monitoring wells or other tests may be required to determine the direction of groundwater flow.)
- (11) Typical cross sections, elevations and stability calculations for water retaining weirs, dams and dikes and of earth-retaining structures alongside open waterways and wetlands.

§235-5. Certificate of compliance.

- A. The applicant may, by written request, seek a certificate of compliance from the Commission. The request shall be accompanied by a written statement from the applicant's engineer or, in the absence of engineered plans, by the applicant that the activity described in the application and plans has been completed in accordance with the order.
- B. After receipt of the request for a certificate of compliance, an on-site inspection shall be made by the applicant and the Commission or its agent.
- C. If it is determined by the Commission that the order has not been satisfied, the Commission may deny the issuance of a certificate of compliance. When a project has been completed in accordance with the order, the Commission shall issue a certificate of compliance (Attachment No. 6).⁷

§235-6. Emergencies.

- A. An application shall not be required for emergency projects necessary for the protection of health or safety of the Town of Westford or the commonwealth.

⁷ Editor's Note: Attachment No. 6 is available for inspection at the Conservation Commission office.

- B. An emergency project shall mean any project certified to be an emergency by the Commission or the Board of Selectmen.
- C. Any person requesting certification of an emergency project shall specify why the project is necessary for the protection of the health and safety of the town or commonwealth. If ordered by another government agency or board, the reason for the ordered project shall be specified. The certification of emergency shall describe the work which is to be allowed. No such work shall be allowed beyond that necessary to abate the emergency. A site inspection shall be made prior to certification.
- D. The time limitation for emergency work shall not exceed thirty (30) days unless it is with the written approval of the Commission.

§295-7. Severability.

If any provision of these regulations or their application is held invalid, such invalidity shall not affect the remaining provisions of the regulations.

§235-8. Effective date.

- A. The effective date of these regulations shall be January 1, 1989.
- B. All proceedings and actions commenced under the bylaw prior to the effective date of the within regulations shall remain in full force and effect.